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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of NICOLE D. and PAUL
F. GROVER IV.

NICOLE D. GROVER,

Respondent,

v.

PAUL F. GROVER IV.,

Appellant.

G050537

(Super. Ct. No. 09D006303)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Glenn R. Salter, Judge. Affirmed.

Law Office of Patrick A. McCall, Patrick A. McCall and Jonathan M.
Kaiho for Appellant.

Masson & Fatini, Richard E. Masson and Susan M. Fatini-Masson for
Respondent.

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Paul F. Grover IV (appellant) appeals from the denial of his order to show cause to reduce his child support obligation. Appellant contends that, under the facts of this case, the trial court did not need to find a material change of circumstances to reduce the support order. Alternatively, assuming a showing of material change of circumstances was required, appellant argues the evidence supported a ruling in his favor. Finding no prejudicial error, we affirm the postjudgment order.

I

FACTS AND PROCEDURAL BACKGROUND

The parties married in 2005 and separated in 2009. They have two children, one born in August 2006, and a second born in February 2008. During the marriage appellant worked as a real estate broker. Nicole D. Grover (respondent) did not work outside of the home. The parties dissolved their marriage in May 2011.

The 2011 judgment of dissolution incorporated the parties' marital settlement agreement, which expressly declared it was "a final and complete settlement of all their rights and obligations." The agreement provided for a release of all claims and contained the parties' waiver of their rights to set aside the judgment. Among other matters, appellant was awarded his interest in two subchapter S corporations, PFG Diversified, Inc. (PFG) and Strategic Land Advisors, Inc. (SLA).¹ Both parties waived the right to receive spousal support.

The parties agreed to share joint legal and physical custody of the children. The marital settlement agreement included a detailed schedule of appellant's parenting time and a schedule concerning holidays and special dates.

¹ A subchapter S corporation is an incorporated small business where the net profits are allowed to pass through the entity to the shareholders and the income tax is imposed directly on shareholders in proportion to their ownership interest. (33A Am.Jur.2d (2016) Federal Taxation, §§ 4620, 4621.)

On child support, the parties agreed appellant would pay respondent \$3,500 a month for both children. According to the marital settlement agreement, the support order was “also based on a projected, but not certain, annual income for [appellant] of Two Hundred and Fifty-Seven Thousand Dollars (\$257,000.00) and no income for [respondent],” plus “a time share of eighty percent (80%) to [respondent] and twenty percent (20%) to [appellant].” Paragraph 2. A. contained the following statement: “The Court finds that the Parties have acknowledged, pursuant to *Family Code* Section 4065,² that: (i) they are fully informed of their rights concerning child support; (ii) they have agreed to the child support provisions of this Judgment without coercion or duress; (iii) this Judgment is in the best interests of the child involved; (iv) the needs of the child will be adequately met by this agreed-upon arrangement; and (v) they have not assigned the right to support to the county and no public assistance application is pending.”

Ten months after the judgment of dissolution was entered appellant filed an order to show cause seeking a reduction of his child support obligation. He claimed “my income has been and is projected to be significantly less than the presumed amount and my time share is greater.”

Hearings on the order to show cause occurred on several dates between October 2013 and April 2014. The parties presented conflicting evidence on several issues.

One subject of dispute concerned appellant’s income. Appellant conducted his business through PFG, in which he held a 100 percent interest and SLA, in which he owned a 50 percent interest. PFG provides professional consulting services as well as brokering transactions. SLA is a real estate sales brokerage and also provides consulting services to financial institutions concerning the development of real estate. Appellant described PFG as “a facility that I’ve used for tax efficiencies on money that I made.” He

² Unless otherwise indicated, all further statutory references are to the Family Code.

acknowledged SLA would frequently hire PFG to provide it with consulting services and that PFG in turn hired him to perform the work. Appellant also agreed that he was responsible for a majority of SLA's expenses.

Appellant testified that, contrary to the 2011 judgment, he never earned \$257,000 in a year. In support, he introduced his individual tax returns for 2009 through 2012, all of which reflected negative income for tax purposes.

According to appellant, the \$257,000 figure appearing in the judgment was based on his anticipated receipt of a large commission from the sale of a promissory note secured by property known as Mesa Verde Estates. The property was the subject of a bankruptcy proceeding and the bankruptcy court had retained SLA on terms authorizing it to receive a commission of \$257,000 if the Mesa Verde Estates' note sold for \$10 million or more. Otherwise, SLA would only be entitled to a commission of \$37,500. SLA was unable to complete a sale of the note for \$10 million and received only the smaller fee, much of which was used to pay expenses.

Appellant further claimed that in April 2013 he was hired by a company named CSC Telecom at an annual salary of \$80,000. At a January 2014 hearing, appellant testified that although he continued to work for CSC Telecom, he had not received a paycheck since August 2013. Appellant claimed he also began withdrawing funds from his retirement accounts to supply capital to PFG.

Respondent disputed appellant's drop in compensation claims. She asserted his annual income had been and continued to be at least \$257,000. In support, she obtained appellant's admission that when the parties signed the marital settlement agreement he had anticipated earning over \$200,000 in 2011 "based upon [the] history of [his] earnings." He also conceded paying many of his personal expenses through PFG and SLA, and that PFG, SLA, and CSC Telecom shared the same office space.

Further, appellant acknowledged that he borrowed \$365,000 from his mother for SLA's start up expenses and other business obligations. Although he had not

repaid any of this sum, the debt did not appear on SLA's balance sheet. Appellant claimed his mother loaned \$200,000 of this amount before the parties separated, and that both he and respondent signed a promissory note evidencing the debt. But respondent denied signing the note and questioned the authenticity of the document.

Another disputed issue relevant to appellant's support obligation concerned the amount of time the children were in his care. Appellant estimated he had custody of the children 30 percent of the time. To support this claim, he produced a spreadsheet derived from text messages and photographs that purported to document his custodial time with the children. Respondent introduced her own spreadsheet of appellant's custodial time purportedly derived from text messages and e-mails. She claimed that over an 18-month period appellant's custodial time amounted to only 15 percent.

Appellant also relied on the parties' modification of custodial time that resulted from a March 2014 mediation. The modification extended his custodial time on Wednesdays from three hours to overnight visits and, in alternating years, added two more days over the Fourth of July holiday and a week during the children's spring break.

A third issue bearing on appellant's support obligation concerned respondent's income. She admitted receiving a bachelor's degree in criminal justice in 2012. Respondent testified that she had looked for jobs, but could not find one that would accommodate the children's school schedule. As for placing the children in day care, in addition to the expense, their son's medical issues made difficult to find a program that would accept both children.

Respondent admitted she lives with another man. According to her income and expense declarations, he earns \$3,000 a month. Respondent acknowledged paying her bills and legal expenses with occasional loans from her parents and money received for a school grant. She testified that she intends to repay her parents, but acknowledged there was no agreement to do so.

II DISCUSSION

A. Introduction

With certain exceptions, “a support order may be modified . . . at any time as the court determines to be necessary.” (§ 3651, subd. (a).) Generally, the party seeking to modify a child support order has the burden to establish there has been a material change in circumstances since entry of the last support order. (*In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1303; *In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1234.)

“[A] determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found from examining the record below.” (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 555, 556.) “To the extent [the appellant] challenges the trial court’s factual findings, our review follows established principles concerning the existence of substantial evidence in support of the findings. On review for substantial evidence, we examine the evidence in the light most favorable to the prevailing party and give that party the benefit of every reasonable inference. [Citation.] We accept all evidence favorable to the prevailing party as true and discard contrary evidence.” (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1151.)

B. Section 4065

As noted, the parties stipulated to a monthly child support order of \$3,500 for both children. Paragraph 2. A. of the marital settlement agreement contained certain findings intended to satisfy the requirements of section 4065, subdivision (a). That statute applies where a court approves “a stipulated agreement [for child support] below the guideline formula amount.” (*Ibid.*)

However, during the hearings on the order to show cause the trial court acknowledged the stipulated child support order was “pretty close to being exactly what” appellant would be obligated to pay under the child support guideline formula. The court’s minute order noted, “plugging \$257,000 annual income in X-Spouse produces the same child support award [as] in the agreement.” Thus, the court drew “[t]he inference . . . the child support award based on a projected income of \$257,000 is below guideline because [appellant’s] annual income exceeds \$257,000.”

Citing this finding, appellant first argues that, under subdivision (d) of section 4065, he did not need to show a change of circumstances to modify his child support obligation. Subdivision (d) states, “[i]f the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.”

Appellant’s argument lacks merit. Subdivision (d) of section 4065 is a limited exception to the general rule that a party seeking to modify a support order must show a material change of circumstances since the last order. (*In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015.) By its terms, subdivision (d) only authorizes a child support modification without a change of circumstances where two requirements are met: (1) The parties “stipulate to a child support order *below* the amount established by the statewide uniform guideline” (*ibid.*); and (2) the “modification” sought is “to the *applicable* guideline level *or above*” (*ibid.*; italics added). Here, there was evidence of the first requirement, but not the second. Appellant sought *reduction* of his current child support obligation. While he based his argument on a claim his income had dropped significantly since entry of the judgment, by requesting the child support award be lowered, appellant needed to show a change of circumstances.

Appellant also cites California Rules of Court, rule 5.260(c) in support of his argument. This rule states: “The supporting declaration submitted in a request to

change a prior child, spousal, or domestic partner support order must include specific facts demonstrating a change of circumstances. *No change of circumstances must be shown to change a previously agreed upon child support order that was below the child support guidelines.*” (*Ibid.*, italics added.) Although the second sentence appears to support appellant’s argument, the Judicial Council’s authority to “adopt rules for court administration, practice and procedure,” is limited to rules “not . . . inconsistent with statute.” (Cal. Const., art. VI, § 6, subd. (d).) Thus, the “[California] Rules of Court are construed in a manner that maintains their consistency with statutory or constitutional requirements.” (*Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 365.) “To the extent [a] rule . . . is inconsistent with or does not track the language of the statute it purports to implement, it cannot be followed.” (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 63-64.) We interpret the second sentence of rule 5.260(c) as applying only where a party seeks to *raise* a child support order that is below the guideline amount to the guideline or above. Since that is not the case here, appellant’s reliance on California Rules of Court, rule 5.260(c) also lacks merit.

C. Material Change of Circumstances

As noted, generally it is error to modify a child support order without evidence of a material change in circumstances. (*In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1292.) Presenting a broad-based attack on the trial court’s denial of his order to show cause, appellant alternatively contends he presented evidence of a material change of circumstances supporting a reduction of his child support obligation.

“‘There are no rigid guidelines for judging whether circumstances have sufficiently changed to warrant a child support modification. So long as the statewide statutory formula support requirements are met [citation], the determination is made on a case-by-case basis and may properly rest on fluctuations in *need* or *ability to pay*.’” (*In re Marriage of Leonard, supra*, 119 Cal.App.4th at p. 556; *In re Marriage of Laudeman*,

supra, 92 Cal.App.4th at p. 1015 [“Each case stands or falls on its own facts, but the overriding issue is whether a change has affected either party’s financial status”].)

None of appellant’s contentions has merit.

1. The Nonmodifiable Judgment Claim

First, appellant contends the trial court erroneously concluded “the terms of [the] parties’ May 2, 2011 judgment mandated that the child support was non-modifiable.” (Underlining omitted.) He notes that even where the parties have stipulated to a child support order, courts retain the jurisdiction to modify it. (§ 3651, subd. (e) [court’s authority to modify a support order “whether or not the support order is based upon an agreement between the parties”]; *In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 730 [“the court always has the power to modify a child support order, upward or downward, regardless of the parents’ agreement to the contrary”].)

Appellant’s argument misstates the trial court’s ruling. The court recognized the parties entered into a bargained for integrated agreement. In addition, it noted that because of the nature of appellant’s work, his “[c]ommissions . . . are erratic; they can be very high when they come, but there can be a long absence of commission checks if deals do not close.” After rejecting appellant’s claims concerning what he earned historically and his assertion that the Mesa Verde Estates project commission constituted “an unrealized expectation,” the trial court ultimately concluded, the parties agreed to “a guaranteed monthly support payment.” “[T]he parties understood, and intentionally bargained for, a relationship that prohibited the child support award from being modified simply because one of [appellant’s] real estate projects . . . , or even several of his projects, did not result in a commission. Of course, the reverse is true, as well. [Respondent] cannot come forward after [appellant] has concluded a big deal and claim she is entitled to an increase in monthly child support simply because [appellant] earned a significant commission.” Consequently, the court, concluded it was “bound to

enforce the expectations of the parties,” and ruled “[t]he loss of the Mesa Verde Estates project, as well as [appellant’s] failure to make other deals, is not a material change in circumstances. The burden was on [appellant] and he failed to meet it.”

The trial court’s findings reflect that it properly understood the focus was on whether appellant had shown a material change in circumstances to support a modification of his child support obligation. Thus, contrary to appellant’s argument, the trial court did not deny his order to show cause on the ground the marital settlement agreement was nonmodifiable.

2. The Failed Expectation Claim

In its minute order, the trial court rejected appellant’s assertion “that the loss of the [increased] commission on the Mesa Verde Estates project . . . represented an unrealized expectation.” Citing case law declaring a failed expectation may constitute a material change in circumstances justifying a modification of a support order, appellant argues the trial court’s ruling on this issue was erroneous. Again, we disagree.

Several cases have recognized that if a prior order requiring the reduction or elimination of spousal support is premised on the occurrence of a future event, such as overcoming mental illness or completing a course of training, the nonoccurrence of the future event may constitute a material change of circumstances supporting a modification of the prior order. (*In re Marriage of Biderman* (1992) 5 Cal.App.4th 409, 413 [recognizing rule]; *In re Marriage of Schaffer* (1984) 158 Cal.App.3d 930, 933-934 [modification affirmed where original order “based . . . upon an assumption of wife’s recovery from mental illness and her anticipated improved employability and earning capacity”]; *In re Marriage of Jacobs* (1980) 102 Cal.App.3d 990, 993 [stipulated judgment limiting spousal support based on assumption wife would overcome psychological problems subject to modification where she had “same medical needs and the same psychiatric problems as at the time of the interlocutory decree”]; *In re Marriage*

of *Andreen* (1978) 76 Cal.App.3d 667, 673 [failure of assumption that “wife would be earning enough to afford a standard of living appropriate to the parties’ social and cultural condition” by a certain date “would constitute a change of condition and provide a ground for modification”].) None of these cases apply here.

First, we note appellant misstates the holding in *Biderman*. That case rejected a conclusion there had been a failed expectation justifying a modification of the prior spousal support award. Second, all of the cases applying or recognizing the failed expectation rule involved spousal support, not child support. Spousal support awards frequently provide for the reduction or elimination of the obligation based on the supported spouse’s eventual ability to become self-supporting. Child support on the other hand continues and frequently increases until the child either dies, becomes emancipated, or reaches the age of majority. Finally, as the trial court held, “[n]othing in th[e child support] paragraph says [appellant’s] obligation to pay child support is limited to annual income only from a select portion of his business activities or from a select business opportunity.”

The record fails to support appellant’s claim his failure to receive a large commission on the Mesa Verde Estates’ note sale constituted a change of circumstance justifying a reduction of his child support obligation.

3. The Trial Court’s Findings on Appellant’s Income

After rejecting appellant’s unrealized expectation argument, the trial court ruled his “argument also ignores the fact he had income from two of his S corporations and he has a job which is supposed to pay him \$6,600 per month. Moreover the [marital settlement agreement’s] support paragraph speaks of ‘annual income.’ That term is broad enough to include income from his two corporations and the regular loans he has received from family.”

Relying on his own testimony and documentation, appellant asserts uncontroverted evidence established he had suffered a significant decrease in his income since the May 2011 judgment. This argument lacks merit for several reasons.

First, contrary to appellant, the evidence concerning his current income was not uncontroverted and, by failing to provide a complete summary of the evidence, he waived his right to challenge the adequacy of the trial court's factual findings. "The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived.'" (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 230.)

Second, the inferences that can be drawn from the evidence support the trial court's reliance on appellant's income from his businesses and employment. "[I]ncome is broadly defined for purposes of child support." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 285.) It includes "commissions, salaries" and "pensions" (§ 4058, subd. (a)(1)), net "[i]ncome from the proprietorship of a business" (§ 4058, subd. (a)(2)), and "[i]n the discretion of the court, . . . self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts" (§ 4058, subd. (a)(3); *In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 109 [court may infer business owner who "structure[s] income and the payment of expenses to depress income" is "attempt[ing] to minimize child support obligations"]; *In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 529 [substantial evidence that rent paid for obligor spouse's condominium and payment for car "represented *employment* benefits"].)

Third, the trial court did not err by relying on the loans appellant received from his mother as a source of his current income. Generally, if there is an expectation of

repayment, funds received from a third party are not considered to be income for the purpose of determining one's obligation to pay child support. (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312-1313.) But again, the evidence as to the true nature of the mother's disbursements was a subject of dispute at trial and there was evidence to support the trial court's consideration of these funds in determining appellant's current income. Appellant presented a promissory note he claimed was signed by both he and respondent for a loan that appellant invested in SLA. But respondent denied the note's authenticity. The trial court was free to believe her. Appellant also admitted that, after the parties separated, he borrowed additional funds from his mother. He did not produce any promissory notes or other documentation supporting a conclusion these disbursements constituted bona fide loans.

Given the state of the record and appellant's briefing, we conclude the record supports the trial court's finding there had been no significant adverse change in appellant's income since the May 2011 judgment.

4. The Admission of Respondent's Opposing Declaration

Respondent attached a declaration to her October 2012 opposition to appellant's order to show cause. It states she had obtained "through discovery" ledgers for appellant's two businesses. According to respondent, these documents reflected PFG had already received \$63,000 in commissions by the end of May of that year, while SLA had "received over \$214,000 in total income" through the month of June. Respondent also denied appellant's claim he was withdrawing substantial sums from his retirement accounts. She asserted that "[a]s soon as money hits [appellant's] account, he pays off debt, which is why he shows no profit and why he is 'broke.'" Respondent estimated appellant's "total income" for 2012 would be "around \$220,000."

Appellant filed 34 objections to respondent's declaration, primarily on the grounds it contained hearsay, lacked foundation, and was speculative. At the initial

hearing on appellant's order to show cause, the trial court indicated many of the objections appeared to be "well-taken." But, the trial judge opined the objections probably would not "eliminate . . . any pertinent information," nor have "a major impact" on the proceedings. In its subsequent minute order denying the order to show cause, the trial court summarily overruled appellant's objections to the declaration and referred to its contents. On appeal, appellant argues the trial court erred in overruling his objections to respondent's declaration.

We conclude that, even assuming the trial court erred in overruling appellant's objections to the declaration, the error was not prejudicial. To reverse on this ground, a reviewing court must be "of the opinion that the admitted evidence . . . resulted in a miscarriage of justice." (Evid. Code, § 353, subd. (b).) "A miscarriage of justice should be declared only when the reviewing court is convinced after an examination of the entire case, including the evidence, that it is reasonably probable a result more favorable to the appellant would have been reached absent the error." (*In re Marriage of Smith* (1978) 79 Cal.App.3d 725, 751.) Further, "[p]rejudice from error is never presumed but must be affirmatively demonstrated by the appellant." (*Brokopp v. Ford Motor Co.* (1977) 71 Cal.App.3d 841, 853-854.)

While the trial court referred to respondent's declaration, it relied on other evidence concerning appellant's income in denying his order to show cause. As discussed above, the other evidence supported the trial court's conclusion that appellant had not suffered a significant drop in income. Consequently, any error in admitting the declaration was not prejudicial.

5. Appellant's Parenting Time

The trial court held appellant had failed to carry his burden of showing an increase in his parenting time with the children supported a change in circumstances justifying a modification of his support obligation. In so ruling, the court found the

parties' time logs lacked credibility "insofar as [the documentation] relates to their parenting time compilations." (Boldface omitted.) Thus, the court concluded, "[t]he burden was on [appellant] and again he did not meet it."

On appeal, appellant attacks the trial court's ruling because it did not take into consideration the recent modification of their custody schedule that increased the amount of time he would have the children in his care. He argues the modification "increases [his] parenting time 8.2% compared to the . . . Judgment." Respondent asserts the modified agreement only increased appellant's parenting time by 6 percent, and argues "it can be presumed [the trial court] believed" the additional time "was too insignificant to support a material change in circumstance sufficient for a downward modification in child support."

We conclude there is substantial evidence in this record to support the trial court's determination that respondent's argument has merit. The focus of appellant's order to show cause concerned his claim that his parenting time had always exceeded the 20 percent stated in the May 2011 judgment. The parties' agreement to modify their custody arrangement was reached only a month before the final hearing in this proceeding. Further, while parenting time is a relevant factor, we can infer the trial court did not consider the increase in appellant's custody of the children was, alone, sufficient to support a modification of his support obligation.

6. Respondent's Ability and Opportunity to Earn Income

Finally, appellant attacks the trial court's ruling on the ground its minute order failed to discuss the evidence concerning respondent's ability to earn income and the monies she admitted receiving from her parents.

As appellant notes, in determining child support a court may consider a parent's "earning capacity," rather than his or her actual income, if "consistent with the best interests of the children." (§ 4058, subd. (b); *In re Marriage of LaBass & Munsee*

(1997) 56 Cal.App.4th 1331, 1336-1337 [applying statute in child support modification proceeding].) ““Earning capacity is composed of (1) the ability to work . . .; (2) the willingness to work . . .; and (3) an opportunity to work.”” (*Id.* at pp. 1337-1338.) Recurring gifts can also be considered in calculating income “for purposes of child support,” but “the question of whether gifts should be considered . . . is one that must be left to the discretion of the trial court.” (*In re Marriage of Alter, supra*, 171 Cal.App.4th at pp. 736-737.)

Although the trial court’s minute order does not mention the evidence concerning respondent’s ability to work or the monies she received from her parents, it’s well established “[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Further, the consideration of a parent’s earning capacity and whether to consider gifts of funds in calculating child support are matters within the trial court’s discretion. “To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld ‘as long as its determination is within the range of the evidence presented.’” (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 197.) And “[f]indings will be normally implied to support judgments or orders if supported by substantial evidence.” (*Ibid.*)

Here, there was evidence from which the trial court could have concluded it would be inconsistent with the children’s best interests to impute any earning capacity to respondent because the children’s ages and their son’s medical issues limited her ability to find a job. Also, the testimony concerning the monies loaned to respondent by her parents was limited. Although appellant claims the evidence showed respondent routinely received \$1,500 a month from her parents, the testimony on this issue was equivocal. Respondent initially testified she “occasionally get[s] loans from [her] parents.” When pressed by appellant’s counsel about how much she received “per month,” respondent testified “it varies,” and eventually said, “maybe \$1000, maybe

\$1500.” Thus, the trial court may well have concluded the testimony was not sufficient to show recurring gifts for the purpose of determining child support.

We conclude appellant has not established the trial court abused its discretion in failing to find a material change of circumstances based on respondent’s income and earning potential.

III DISPOSITION

The postjudgment order is affirmed. Respondent shall recover her costs on appeal.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.